

IN THE MATTER OF: )  
 ) Civil Miscellaneous No. 11548-NC  
WILLIE SNOW )

Submitted: September 10, 2005  
Decided: January 17, 2006

Suzanne I. Seubert, Esquire, SUZANNE I. SEUBERT, P.A., Wilmington, Delaware,  
*Attorney Ad Litem for Willie J. Snow*

**PARSONS, Vice Chancellor.**

Pending before me is an application to appoint a guardian for the person and property of Willie J. Snow Sr. (“Mr. Snow”). Mr. Snow is seventy-four years old and currently resides at 3 Blue Rock Road, Wilmington, Delaware. James L. Snow (“James”), one of Mr. Snow’s sons, filed a petition on June 1, 2004 to be appointed as his guardian. As a consequence, Vice Chancellor Lamb appointed Suzanne Seubert, Esq. (“Seubert”) to act as attorney ad litem for Mr. Snow.<sup>1</sup>

Seubert filed an affidavit on November 19, 2004 stating her belief that it would be in Mr. Snow’s best interest to have his son David Snow (“David”) appointed as guardian of his person and property.<sup>2</sup> David and James agree that David should serve as Mr. Snow’s guardian.

On March 18, 2005, Daisy Lee Haile (“Daisy”), who married Mr. Snow in June 2004, moved to intervene. Daisy asserts that Mr. Snow is fully competent and that there is no basis for this Court to appoint a guardian for Mr. Snow’s person or property. In the alternative, Daisy argues that I should appoint her as guardian.

Petitioners, David and James, claim that Mr. Snow is disabled under 12 *Del. C.* § 3901 in that he is mentally incapable of managing or caring for his own person or property and, as a result, is in danger of substantially endangering his own health or

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<sup>1</sup> Pre-Trial Stipulation and Order (“PTO”) at 1.

<sup>2</sup> Mr. Snow’s assets are worth over \$400,000. 8/2/05 Tr. at 184. His primary assets include a residence at 3 Blue Rock Road and a 50% interest in property at 501 South Heald Street. The trial of this matter took place on August 1 and 2, 2005. References to pages of the August 1 transcript are cited in the form “Tr. at \_\_\_\_”; references to the separately paginated August 2 transcript are cited as “8/2/05 Tr. at \_\_\_\_.”

becoming a victim of designing persons. Petitioners ask this Court to appoint David as sole guardian of Mr. Snow's person and property.<sup>3</sup>

This memorandum opinion reflects the Court's post trial findings of fact and conclusions of law. For the reasons set forth below, I conclude that Mr. Snow is a disabled individual within the meaning of 12 *Del. C.* § 3901. Moreover, I conclude that, as a consequence of his mental incapacity, Mr. Snow is exposed to a real possibility that his property will be dissipated or those around him or others might take advantage of him or coerce his decision making. Thus, I have determined that Mr. Snow needs a guardian and will appoint David and Daisy as equal co-guardians of Mr. Snow's person and property. The co-guardians can agree upon a mutually acceptable way to handle the day-to-day responsibilities of Mr. Snow's property and matters relating to his person. David and Daisy, however, may not make any major decisions without the other's agreement or a Court order.

## **I. FACTS AND PROCEDURAL HISTORY**

Mr. Snow was born on June 1, 1932. He grew up in South Carolina and moved to Wilmington, Delaware in 1955.<sup>4</sup> A father to 13 children, Mr. Snow worked hard all his

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<sup>3</sup> Petitioners expressed less concern as to who this Court should appoint as guardian of Mr. Snow's person, provided an appropriate guardian is appointed. 8/2/05 Tr. at 188.

<sup>4</sup> Tr. at 44-45 (Snow).

life, including working construction and owning and managing his own store.<sup>5</sup> Mr. Snow demonstrated love and admiration for his children. He helped his children at various stages in their lives including providing financial assistance for college, various car loans, and other monetary support.<sup>6</sup>

Mr. Snow's children have come from three different relationships. He and his first wife, Mary, had eight children: James, Rosa, Johnny, Ricky,<sup>7</sup> David, Marietta, Sylvia and Willie.<sup>8</sup> Another relationship with a girlfriend produced four children who carry the last name of Willis, they are: Michael, Leslie, Adrian and Darlene.<sup>9</sup> In addition, Mr. Snow has had a relationship with Daisy for many years, and they have a daughter, Stacey Henry. The fact that there are children older and younger than Stacey indicates that some of Mr. Snow's relationships overlapped.

Mr. Snow also had a longstanding relationship with another woman, Barbara Smith. He lived with Barbara at the 501 South Heald Street residence for seven years, until she passed away in 2002.

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<sup>5</sup> From the early 1960's until he got sick around 2002, Mr. Snow owned and operated "Snow's Deli" on the ground floor of 501 South Heald Street. Updated Aff. of Attorney Ad Litem, filed November 19, 2004 ("AAL Aff.") ¶ 4.

<sup>6</sup> Tr. at 67 (Snow).

<sup>7</sup> Ricky is deceased.

<sup>8</sup> There is no further information about Mary in the record, except that Mr. Snow reportedly said that he was divorced in the 1960's. AAL Aff. ¶ 4.

<sup>9</sup> Tr. at 60 (Snow).

For the last few years Mr. Snow has resided at 3 Blue Rock Road. Mr. Snow built the house there with the help of one of his sons approximately 28 years ago. Additionally, Mr. Snow owns his previous home and business at 501 South Heald Street, which is in need of repair and currently not habitable.<sup>10</sup> Mr. Snow lived at 501 South Heald Street until he became ill shortly after Barbara Smith died in 2002, and had to close the store.

Mr. Snow's health began to decline several years ago. First, he suffered two mild strokes, one in 1999 and another in 2001.<sup>11</sup> In 2002 Mr. Snow was hospitalized and had various medical abnormalities, including hypertension, diabetes, hyperlipidemia, and a mild case of peripheral vascular disease. After Mr. Snow became ill, Dr. Franklin Ampadu, a family practitioner, began treating him.<sup>12</sup>

Dr. Ampadu conducted several examinations including a stress test and a mini-mental exam which yielded normal results.<sup>13</sup> In particular, regarding Mr. Snow's mental

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<sup>10</sup> Mr. Snow also owned a residence known as the Rosegate property. He sold that property in 2002. James handled the sale. Mr. Snow used \$24,000 of the proceeds to pay various expenses and debts including unpaid taxes, mortgage payments and a payment on an outstanding car loan. Respondents' counsel raised questions as to the legitimacy of the handling of the Rosegate sale and the proceeds of it. 8/2/05 Tr. at 196. The validity of that sale is not at issue in this proceeding. Moreover, Respondents did not present any evidence of bad faith in regard to the Rosegate undertaking. *See, e.g., id.* at 162.

<sup>11</sup> Tr. at 124 (David).

<sup>12</sup> Dr. Ampadu's partner Dr. Oluseyi Senu-Oke also treated Mr. Snow. Pl.'s Ex. ("PX") C.

<sup>13</sup> Mr. Snow scored 26 out of 30 on the mini-mental exam that Dr. Ampadu administered on July 21, 2005. According to Dr. Ampadu the average 70 year old

capacity, Dr. Ampadu concluded that Mr. Snow had some short term memory loss possibly attributable to stress, depression or mood disorders.<sup>14</sup> According to Dr. Ampadu, Mr. Snow's overall condition in 2005 was such that he had sufficient mental competence to handle the decisions involved in daily living.<sup>15</sup>

Mr. Snow also received care from Dr. Jose D. Manalo, a family physician who treated Mr. Snow for many years earlier in his life.<sup>16</sup> Mr. Snow's contact with Dr. Manalo ended in 1982; he did not see him again until a recent visit and examination in 2004. Dr. Manalo reached a contrary conclusion from Dr. Ampadu. Dr. Manalo's mini-mental exam produced a below normal result indicating that Mr. Snow had some mental deficiencies in terms of his memory.<sup>17</sup> An MRI prescribed by Dr. Manalo in 2004 also revealed calcification and moderate to severe hardening of arteries and vessels going

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man scores a 24. The mini-mental exam is a formulated memory test conducted during a doctor's visit that encompasses five areas of memory including orientation, registration, calculation, attention and language. Tr. at 184-85 (Ampadu).

<sup>14</sup> Tr. at 191 (Ampadu).

<sup>15</sup> *Id.* at 189.

<sup>16</sup> *Id.* at 17 (Snow). Mr. Snow stopped seeing Dr. Manalo when Dr. Manalo went out of practice because of a heart condition. Dr. Manalo did not examine Mr. Snow again until a couple of years ago. *Id.*

<sup>17</sup> On June 3, 2004 during a scheduled visit Dr. Manalo gave Mr. Snow a mini-mental exam. Mr. Snow scored 20 out of 30, which in Dr. Manalo's opinion was 8 points below normal. *Id.* at 285 (Manalo). According to the attorney ad litem's report, Mr. Snow did only nominally better (22 out of 30) in late July 2004, when he was evaluated by the University of Delaware Department of Nursing, GAIT Program. AAL Aff. ¶ 18.

to and from the brain.<sup>18</sup> In Dr. Manalo's opinion, the mini-mental exam results present a possible warning sign for dementia or Alzheimer's disease. Dr. Manalo also testified, contrary to Dr. Ampadu's opinion, that stress would not significantly affect the results. Thus, he concluded that, although Mr. Snow is physically capable, he lacks the mental capacity to live alone without assistance.

Following his hospitalization in 2002, Mr. Snow moved in with Daisy, whom he has known for 44 years, at the 3 Blue Rock Road property. Mr. Snow married Daisy on June 6, 2004, five days after James filed the petition for guardianship in this case.<sup>19</sup> Since Mr. Snow moved back to the Blue Rock Road address Daisy has taken him to Doctor's appointments, picked up his prescriptions, cooked, cleaned and done laundry for him. From a financial standpoint, Daisy pays for the household utilities while Mr. Snow pays the property taxes and mortgage. Together they share expenses for various

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<sup>18</sup> The laboratory report dated May 3, 2004 indicates that Mr. Snow showed signs of Micro Essel disease, Ischemia and Class C Carotid disease, which in layman's terms point to a lack of circulation or oxygen to the brain region. *Id.* at 289 (Manalo).

<sup>19</sup> Daisy and Mr. Snow's church pastor in Chester, Pennsylvania married them on June 6, 2004. DX B. On June 9, the Clerk of the Peace in New Castle County notified Daisy and Mr. Snow by letter that an out of state marriage ceremony would have no legal bearing in Delaware. *Id.* Consequently, on June 23, they appeared before Clerk of the Peace Kenneth W. Boulden, Jr. and were married in Delaware. *Id.* With the exception of Stacey, Mr. Snow's children only received notice of their father's marriage to Daisy through the newspaper. *Id.* at 76 (Snow).

necessities.<sup>20</sup> Daisy also assures that Mr. Snow takes the advice of his physicians and his prescribed medications.

Although Mr. Snow has paid off various debts and appears to have some financial stability, he has had difficulty finding the resources to pay his bills. Mr. Snow also has struggled with the ability to manage his financial affairs. Several situations demonstrate Mr. Snow's lack of financial competence. For example, until recently, Mr. Snow has been delinquent on paying state, county, property and school taxes.<sup>21</sup> He also could not recall the financial institution or interest rate of a mortgage he took out on his Blue Rock Road property in 2004 primarily to help pay expenses for his illness and inability to work.<sup>22</sup> Additionally, at trial Mr. Snow could not recall who insured his home, although he thought State Farm did.<sup>23</sup>

Most recently, Mr. Snow borrowed \$6,000 from Stacey to repair and renovate the 501 South Heald Street property. Contemporaneously, Mr. Snow executed a new deed to that property under which he holds joint title to it with Stacey.<sup>24</sup> Mr. Snow testified that

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<sup>20</sup> Daisy and Mr. Snow have a joint checking account that they use to pay most of their monthly bills. With respect to paying bills, Daisy writes the checks and Mr. Snow signs them. 8/2/05 Tr. at 56 (Daisy).

<sup>21</sup> DX C.

<sup>22</sup> Mr. Snow took out the mortgage on June 10, 2004 for \$20,270.42 with Citifinancial, Inc. PX D.

<sup>23</sup> Seubert's report indicated that during a visit with Mr. Snow he could not locate his insurance policy, and Daisy later provided a copy of a Nationwide bill dated June 2004 which seemed to indicate homeowners insurance coverage for the Blue Rock Road dwelling. AAL Aff. ¶ 9.

<sup>24</sup> PX A.



he did not intend to deed away half of his South Heald Street property to Stacey, but only to secure the repayment of the loan to her in case he died before he repaid it.

Q. [Seubert] All right. And you were going to tell us how it came that the property is owned jointly now with Stacey . . . .

A. When I was -- I was sick. . . . and I was getting a little behind on some bills and stuff, and I asked Stacey to borrow some money. . . . I said, Well, make sure -- I want to put your name on here until I pay your money back. In case something happens to me, you won't lose your money.

Q. Did you intend when you put her name on the deed to give her half the property?

A. Well, no. I intended to pay her money back, really. . . . I put her name on it just in case, you know, I was sick, you know. You know, what happened, so if something had happened to me, she could get her money first that she loaned me. And then the rest of the property is divided up between all my kids. That's how I wanted it.

Q. Did you realize when you executed the deed that you were giving Stacey one half the value of the property?

A. I really didn't understand it that way. . . . [W]e wasn't making a deal like that for half the property. I give her -- she didn't ask for nothing. I told her let's go put your name on here, because if something happens to me, that -- hopefully that wouldn't happen, but you wouldn't lose your money.<sup>25</sup>

Mr. Snow estimated the value of the South Heald Street property at more than \$50,000.<sup>26</sup>

Mr. Snow's children also have done their share in caring for his needs since his health declined. Despite their various careers and busy schedules, Mr. Snow knows that

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<sup>25</sup> Tr. at 13-14 (Snow).

<sup>26</sup> *Id.* at 92.

his children are only a phone call away and willing to assist him. For example, James checks on his father an average of once a week and David visits two to three times per month. Additionally, James generally gives his father financial assistance on a weekly basis. Other of Mr. Snow's children come to visit him from time to time.<sup>27</sup>

Despite the loving relationship between Mr. Snow and his children, some of the children do not get along with one another. The hostility primarily stems from a strained relationship between Stacey on the one hand and the Willis and Snow children on the other. Particular problems have arisen between Stacey and Leslie Willis and between Stacey and James.<sup>28</sup> This interfamily bickering is very distressing to Mr. Snow.

Another series of events that raise doubts as to Mr. Snow's ability to handle his affairs involve a durable power of attorney. Over a period of three years between November 2000 and November 2003, Mr. Snow executed multiple, conflicting powers of attorney. Initially, he gave James sole power of attorney. Later, Mr. Snow added David and Stacey as attorneys in fact. Then, on August 23, 2002, Mr. Snow transferred the

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<sup>27</sup> *Id.* at 52 (Snow).

<sup>28</sup> For example, Stacey and James had a public confrontation over their father's care at Dr. Manalo's office. On another occasion Leslie had an argument with Stacey when Stacey went to take her father to the doctor. During this confrontation, Stacey picked up a long stick and began chasing Leslie. Tr. at 138-39 (James). Yet another time, before Mr. Snow went to an attorney's office to change his durable power of attorney, Stacey contacted the police because she thought the other children were taking advantage of him. *Id.* at 130-35.

power of attorney back to James, individually. Finally, on November 1, 2003, Mr. Snow rescinded James's power of attorney.<sup>29</sup>

Poor relations among the children have made it difficult and uncomfortable for the Willis and Snow children to visit their father. For example, following an altercation with Stacey, Leslie made less of an effort to visit her father. Similarly, following an argument with Stacey, James avoided visiting Mr. Snow anytime he believed Stacey might be there.

After James filed the petition for a guardianship over Mr. Snow on June 1, 2004, Vice Chancellor Lamb appointed Seubert as Mr. Snow's attorney ad litem. In a report dated June 15, 2004, Seubert described Mr. Snow's situation along with his wishes and gave her evaluation of what would be in his best interest in terms of the guardianship petition. Seubert confirmed that Mr. Snow takes medication for high blood pressure and diabetes and that his children have expressed their care and concern for him. Additionally, Seubert reported that Mr. Snow wants the tension in his family to cease.

With respect to Mr. Snow's finances, Seubert observed that he appeared to be in a financial dilemma. More specifically, Seubert's June 15 report indicated that Mr. Snow's monthly expenditures consumed his entire social security check and that to get by financially he had to use his savings, the proceeds from the sale of his Rosegate property, and the money he received from an accident, as well as financial assistance from his son James. In an updated affidavit filed in November 2004, Seubert noted that Mr. Snow's

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<sup>29</sup> DX A.

debt payments evidently were less than his monthly social security check. When she asked Mr. Snow about this, she learned that he had “refinanced” his debt, so that he only paid \$200 per month and therefore had more funds available to him.<sup>30</sup>

Seubert also expressed concern that on numerous occasions Mr. Snow did not return her phone calls and failed to appreciate the importance of communicating with her.<sup>31</sup> Seubert further indicated that, in her opinion, the circumstances surrounding the various durable powers of attorney raise a legitimate concern about coercion. In her November 2004 updated affidavit, Seubert stated that it would be in Mr. Snow’s best interest for David to be appointed as the guardian of Mr. Snow’s person and property. Although Mr. Snow questioned the need for a guardian, he agreed “that his son, David Snow is better able to deal with all factions of the family in a calm and fair manner.”<sup>32</sup>

On March 18, 2005, Daisy filed a motion to intervene asserting that Mr. Snow is fully competent and does not need a guardian. In the alternative, Daisy requests that this Court appoint her as guardian of Mr. Snow’s person and property.

The Court conducted a trial of this matter on August 1 and 2, 2005. Each side presented witnesses and a number of exhibits. On November 25, 2005, David submitted a letter to the Court requesting that I reopen the record so that his aunt, Pearl Jackson, could testify. Because this matter has been pending since June 2004 and all interested

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<sup>30</sup> AAL Aff. ¶ 19.

<sup>31</sup> According to Daisy she told Mr. Snow that Seubert called and he responded “Oh, I’ll call her.” 8/2/05 Tr. at 70.

<sup>32</sup> AAL Aff. ¶ 4.

parties had ample notice of the August trial, I deny the request to reopen the record. Such an action would be prejudicial to Respondents and, perhaps, Mr. Snow and would cause unnecessary delay.

## II. ANALYSIS

Delaware law authorizes the Court of Chancery to appoint guardians for “disabled persons.”<sup>33</sup> The governing statute, 12 *Del. C.* § 3901, requires that the Court make a threshold determination of whether the individual in question is “disabled” before it can appoint a guardian. Section 3901(a)(2) defines a disabled person over 18 years of age as a person who:

[b]y reason of mental or physical incapacity is unable properly to manage or care for their own person or property, or both, and, in consequence thereof, is in danger of dissipating or losing such property or becoming the victim of designing persons or, in the case where a guardian of the person is sought, such person is in danger of substantially endangering that persons own health, or of becoming subject to abuse by other persons or becoming the victim of designing persons . . . .<sup>34</sup>

To establish the first element of physical disability or mental incapacity, this Court held in *In Re Gordy*<sup>35</sup> that mental incapacity under § 3901 includes:

(1) a pattern demonstrating an inability to recognize as relevant to decisions of significance, facts or considerations that one would expect reasonable and competent persons to recognize as relevant to such a decision; (2) a pattern demonstrating an inability to reason with respect to decisions

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<sup>33</sup> 12 *Del. C.* § 3901(a).

<sup>34</sup> *Id.*

<sup>35</sup> 658 A.2d 613 (Del. Ch. 1994).

that are relatively simple but personally important in a way that is internally consistent; or (3) the presence of a mental disease or condition that interferes with the operation of the prospective ward's perceptions or reasoning to such an extent as to raise a substantial likelihood that decisions relating to matters of importance to her have been affected by the mental disease or condition.<sup>36</sup>

As to whether such conditions exist, the party “attempting to deprive another of the basic liberty entailed in one’s control” over one’s medical and financial affairs has the burden of proof.<sup>37</sup> The challenging party must prove the condition by a preponderance of the evidence.<sup>38</sup> Although this Court has found medical testimony useful, it may rely on other facts in making its decision.<sup>39</sup>

Petitioners argue that the medical testimony provided by Dr. Manalo shows that Mr. Snow is mentally incapacitated and suffers from significant neurological ailments. Additionally, Petitioners suggest that permitting Daisy to act as Mr. Snow’s sole guardian would enable Stacey, Daisy and Mr. Snow’s daughter, to exert more influence over her father. Petitioners also contend that if Daisy serves as guardian it would foster some of the problematic conduct Mr. Snow has engaged in since he began living with Daisy, such as not taking his medication, failing to pay taxes and securing loans with property whose

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<sup>36</sup> 658 A.2d at 617. The Court further stated that: “While there is a certain degree of redundancy incorporated into the third element of this test, it more easily accommodates professional medical opinion evidence and evidence of past susceptibility to over-reaching and thus is, in my opinion, a useful additional ground for a finding of mental incapacity for guardianship purposes.” *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Brittingham v. Robertson*, 280 A.2d 741, 743 (Del. Ch. 1971).

<sup>39</sup> *See Gordy*, 658 A.2d at 614.

value greatly exceeds that of the loan. Instead, Petitioners contend that David should serve as guardian because all the family members trust and respect him.

Daisy opposes the appointment of a guardian as unnecessary. She contends that Mr. Snow's physical limitations and age do not prevent him from conducting his affairs and making the necessary decisions to manage and care for his person and property. Furthermore, Daisy advocates that Mr. Snow will not dissipate his property or become the victim of designing persons. She asks this Court to consider the testimony of Mr. Snow's current family physician, Dr. Ampadu, and his view that Mr. Snow has the competence necessary to handle his affairs. Additionally, Daisy argues that although Mr. Snow may have made bad decisions and showed signs of incompetence a few years ago, his physical and mental state and current medical prognosis are much stronger today. Daisy also asserts that because a Clerk of the Peace deemed Mr. Snow competent to marry on June 23, 2004, this Court should reach a similar conclusion about his competency here.

In the alternative, Daisy argues that if the Court decides to appoint a guardian, she would best serve that role. Daisy contends that she alone should handle the affairs of Mr. Snow. She bases this position on her status as Mr. Snow's wife, a 40 plus year relationship with him, and her broad understanding of his medical and financial condition.

The first element of the analysis prescribed by 12 *Del. C.* § 3901 and expounded upon in *Gordy* is whether Mr. Snow is "disabled" by reason of physical or mental incapacity. In evaluating this factor the Court considers whether the evidence shows a

pattern demonstrating an inability to recognize as relevant to significant decisions, facts or considerations that one would expect a reasonable and competent person to find relevant to such a decision. Based on the record in this case I find that such a pattern does exist. For example, Mr. Snow failed to pay a number of tax bills in recent years and, at trial, did not know whether he had paid his taxes or whether such taxes had become delinquent. I also consider it troubling that Mr. Snow gave Stacey a 50% ownership interest in 501 South Heald Street, worth at least \$25,000, to secure a \$6,000 loan, without any documented requirement that Stacey give that property interest back to him when he repaid the loan. Based on the evidence, I do not believe Mr. Snow understood the effect of the conveyance. Rather, Mr. Snow's actions in connection with that transaction and his explanation of what he intended to accomplish by it indicate that he was oblivious to facts and considerations that a reasonable and competent person would have considered relevant.

There is other evidence of Mr. Snow's limited capacity to handle his affairs, as well. His failure to return his attorney ad litem Seubert's phone calls demonstrates that he did not realize the importance of communicating with his attorney or understand that she was involved with the petition for a guardianship, which warranted immediate attention. The fact that Mr. Snow did not know the interest rate or identity of the lender of a mortgage he recently took out also raises questions about his ability to manage his property independently. People generally consider refinancing a mortgage to be an important decision. Mr. Snow's inability to recall basic information about his 2004



mortgage reflects negatively on his current mental capacity and his ability to make his own financial decisions, free of undue influence from others.

Respondents argue that facts and circumstances showing that Mr. Snow was incompetent a few years ago and made a few bad decisions were the product of his weaker physical and mental state at that time. They argue that his stronger condition today makes the evidence of his prior questionable decisions irrelevant. I disagree. I did not find Mr. Snow's recent testimony at trial reassuring in the least. Furthermore, the chronology of problematic transactions such as the retitling of the 501 South Heald Street property, the multiple changes in Mr. Snow's power of attorney as late as November 2003, and the mortgage refinancing in 2004 provides ample basis for ongoing concern.

The second element in the *Gordy* analysis asks whether there has been a pattern which demonstrates an inability to reason with respect to decisions that are relatively simple but personally important in a way that is internally consistent. The fact that Mr. Snow essentially gave half of a \$50,000 property to Stacey in return for a \$6,000 loan indicates that he does not understand simple, important transactions. Mr. Snow's inability to explain why he executed four conflicting powers of attorney in three years further demonstrates that he cannot make simple, personally important decisions in a coherent way. Similarly, Mr. Snow's inability to describe the basic facts of the mortgage refinancing he did in 2004 supports the same conclusion. Thus, I find that the evidence shows a pattern of conduct demonstrating that Mr. Snow lacks the ability to reason effectively with respect to relatively simple but personally important decisions.

At trial the parties presented medical expert testimony from Drs. Manalo and Ampadu on the issue of Mr. Snow's mental competence. I found the conflicting opinions of the doctors inconclusive. Both physicians are family care doctors and the basic mental examinations they administered produced differing results. I consider Dr. Manalo's conclusions slightly more convincing based on his evaluation of an MRI examination he prescribed. Although it might not be sufficient standing alone to support a finding of mental incapacity, Dr. Manalo's opinion when considered together with the other evidence described above provides additional support for the conclusion that Mr. Snow does suffer from some degree of mental and memory impairment.

Respondents cite *In re Zane* for the proposition that Mr. Snow is mentally competent.<sup>40</sup> In that case the plaintiff sought guardianship for his mother, claiming she was mentally disabled.<sup>41</sup> At trial, counsel for the allegedly disabled person introduced the testimony of a psychiatrist, who opined that the mother was mentally competent.<sup>42</sup> Plaintiff did not call an expert, but relied instead on a fairly conclusory affidavit from a physician with a general practice. Because the psychiatrist had specialized training in mental illness, the court found his detailed testimony important in determining whether plaintiff had proved the statutory grounds for guardianship. Applying the *Gordy*

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<sup>40</sup> 1998 WL 326598 (Del. Ch. June 9, 1998).

<sup>41</sup> *Id.* at \*1.

<sup>42</sup> *Id.* at \*5.

standard, the court ultimately concluded that the plaintiff had failed to prove that his mother was “disabled” under 12 *Del. C.* § 3901.<sup>43</sup>

Unlike *Zane*, both sides in this case offered expert testimony. In addition, both experts were family physicians with relatively similar qualifications; neither side called a specialist. Moreover, the physicians offered conflicting opinions as to Mr. Snow’s competency, and I found the testimony of Petitioners’ expert credible. Therefore, I do not find *Zane* persuasive in the circumstances of this case.

Based on this analysis, I conclude that the first requirement for a finding of disability under the test articulated in the *Gordy* case exists here. That is, the evidence shows that Mr. Snow is mentally incapacitated.

The second requirement in determining whether the appointment of a guardian is necessary focuses on the consequences of the incapacity. Specifically, the Court must determine whether Mr. Snow’s mental incapacity creates a danger that designing persons will take advantage of him. The record suggests that the love Mr. Snow has for all 12 of his surviving children and their love for him pulls his interest in many different directions and puts him at the mercy of the people he needs to rely on at any particular time. Mr. Snow’s deeding of a 50% interest in his property to Stacey in return for a loan illustrates this phenomenon, as do the multiple changes in his durable power of attorney and James’ less than ideal handling of the Rosegate property sale. The totality of the evidence suggests that Mr. Snow could fall prey to undue influence by those around him

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*Id.*

in his daily life, including his children. Although none of the situations described above has been shown to involve bad faith, those incidents coupled with the competing concerns and bad blood among various family factions lead me to conclude that a danger does exist of Mr. Snow falling prey to coercion, undue influence and manipulation by persons with designing intent, as a result of his mental incapacity.

The report provided by Mr. Snow's attorney ad litem indicates that he is not in the safest of settings and has both mental and physical limitations that warrant a guardian. The attorney ad litem also voiced concern that Mr. Snow's diminished capacity makes him prone to being pulled in one direction one day and another direction the next. These observations support my conclusion that he is, in fact, disabled within the meaning of 12 *Del. C.* § 3901. Therefore, to ensure Mr. Snow's best interest, I find that appointment of a guardian for his person and property is necessary.

Next I must determine who is best fit to act as guardian of Mr. Snow's person and property. Although each side presented their own individual candidate to take on this role, the circumstances surrounding Mr. Snow's relationship with a number of his children suggests otherwise. The trial testimony shows significant tension between the Haile and Willis/Snow sides of Mr. Snow's family. Manifestations of that tension include an altercation during a doctor's appointment for Mr. Snow, a physical confrontation at Mr. Snow's residence and a marriage ceremony which included only the Haile side of the family and of which the Willis/Snow children had no advance notice. Imposing a guardianship by a representative of only one side of this fractured family likely would heighten, not lessen the level of tension that already exists. It also would be

inconsistent with Mr. Snow's expressed preference for having everyone get along as best they can. Furthermore, the affection that Mr. Snow has for all of his children and his desire to treat each of them equally, leads me to prefer establishing a guardianship that, theoretically at least, will enable everyone to have access to him in some way.

Respondents argue that Daisy should exclusively and solely handle the guardianship duties regarding Mr. Snow. Based on certain questionable transactions that have occurred while Mr. Snow has been living with Daisy, I do not agree. It was during this time that Mr. Snow executed the deed making Daisy's daughter Stacey a co-owner of his South Heald Street property in consideration of a \$6,000 loan. This transaction favored the Haile side of the family and still remained in place as of the time of trial, even though it apparently does not reflect Mr. Snow's intent.<sup>44</sup> Furthermore, Daisy failed to take any action to make sure that Mr. Snow contacted Seubert, despite having received several messages from Seubert to have Mr. Snow call her. This supports an inference that Daisy acted in her own interest with respect to the guardianship. In addition, there is evidence that the strained relations with Stacey and perhaps Daisy, as well, have made it difficult or uncomfortable for the non-Haile children to visit Mr. Snow at the Blue Rock Road property.

Although I do not believe that Daisy is unreliable, the circumstances are too murky to enable me to conclude that a guardianship by Daisy alone would be in the best

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<sup>44</sup> Stacey testified at trial that she would consent to take her name off the deed if the \$6,000 loan were repaid, but *only* if her father wanted her to do that. 8/2/05 Tr. at 156. Her testimony simply illustrates the problem.

interest of Mr. Snow. At a minimum, it likely would cut him off from most of his children and greatly increase family tensions.

For these reasons, I find a co-guardianship between David and Daisy as to both the property and person to be the most equitable structure. I will leave the mechanics of the co-guardianship to David and Daisy, but can envision several possibilities. They might agree, for example, that Daisy would handle the daily responsibilities pertaining to Mr. Snow's property and person with the larger decisions being reserved for a mutual agreement between them. Daisy has provided for Mr. Snow's day-to-day physical needs, such as administering medication and transporting him to various medical appointments. The arrangement may be more complicated regarding Mr. Snow's property, but I would hope that David and Daisy could manage it through budgeting or otherwise. Further, because Mr. Snow has expressed a strong preference for remaining in his home on Blue Rock Road, his guardians will be required to obtain Court approval before attempting to move Mr. Snow to another location.

One benefit of this co-guardianship structure is that it will provide a mechanism by which any of Mr. Snow's children who have questions about how he is doing will be able to find out and to communicate with Mr. Snow. Any family member can contact either co-guardian to obtain information or make other arrangements pertaining to Mr. Snow. As the situation stands today, it may be easier for those on the Snow or Willis side to communicate with David. Stacey, of course, will have ready access through her mother.

As Petitioners point out in their argument, another alternative would be to appoint a third party guardian, such as Senior Partner, Inc. In addition to being more cumbersome, third party guardians cost money. Thus, based on Mr. Snow's difficult financial circumstances, I view it as a last resort. Nevertheless, if the co-guardianship between David and Daisy proves unworkable, it may well become necessary to appoint a third party guardian.

### **III. CONCLUSION**

For the reasons discussed above, I grant the petition for appointment of a guardian for Mr. Snow and will appoint David Snow and Daisy Haile Snow as co-guardians of the person and property of Willie J. Snow Sr. Petitioners shall submit a form of implementing order promptly, on notice to Respondents.

**IT IS SO ORDERED.**